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No. 489

In the Supreme Court of the United States

OCTOBER TERM, 1961

TAK TRAK, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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CITATIONS

Cases:

Universal Camera Corp. v. *National Labor Relations Board*, 340 U.S. 474	7

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*)	
Sec. 8(a)(1)	5, 6, 7
Sec. 8(a)(3)	5, 7
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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 293 F. 2d 270. The Board's decision and order are reported at 128 NLRB 876 (R. 31.)[1]

JURISDICTION

The judgment of the court of appeals was entered on August 1, 1961 (Pet. App. A). The petition for

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[1] References designated "R" are to the pages of the printed record before the court below.

a writ of certiorari was filed on October 11, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence on the record considered as a whole supports the findings of the National Labor Relations Board that petitioner discharged its employees because of their union activities, in violation of Section 8(a)(3) and (1) of the National Labor Relations Act.

STATUTE INVOLVED

The relevant statutory provisions are set forth at pages 3-6 of the petition.

STATEMENT

A. The Board's Findings of Fact

In early July 1959, petitioner ("the Company") operated with about 16 employees on the day shift and about 13 employees on the night shift. On July 12, the Company's general manager, Joseph Kraut, went on a trip and left orders that the amount of overtime work was to be reduced (R. 11, 13; 135-136, 139, 213). This reduction was put into effect on Tuesday, July 14, and that day, at about 5 p.m., the day shift employees and some of those on the night shift congregated outside the plant to discuss the matter (R. 11-12, 32; 49-50). One of their spokesmen, Arthur Moore, went into the plant and asked Foreman Stillwell, who, with Plant Superintendent Ryder, had ob-

served the employee meeting, whether the reduction was permanent (R. 32: 213). When Stillwell replied that it was permanent, Moore returned to the employees outside and advised the men what Stillwell had told him (R. 51, 213). Thereupon, the employees decided to seek assistance, and selected Moore to "contact union officials and try to get the union" (R. 51).[2] On Thursday, July 16, Moore contacted the Union[3] and a meeting was held with Union Organizer Kenneth Buckley at which Moore and eight or nine other day-shift employees signed union authorization cards (R. 12; 54). That night Moore returned to the plant and obtained additional signatures from the night-shift employees. The next morning, Friday, July 17, he obtained still more signatures from day-shift employees who were waiting for the plant to open (R. 12; 55). By that time, twenty of the Company's approximately twenty-nine employees had signed union cards (R. 12).

In the meantime Kraut had returned from his trip, and, on the morning of July 16, Stillwell and Ryder told him about the employees' dissatisfaction with the reduction in hours and about the meeting they had held outside the plant two days before (R. 32; 192). Kraut contacted Linsky, the Company's president and chief operating official, and told him about the situa-

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[2] Moore testified that the possibility of union representation had been discussed in the plant since mid-June when Kraut had mistakenly calculated the employees' bonus for May to be about $3.00 instead of about $13.00 (R. 51-52).

[3] District Council of Painters No. 36, Brotherhood of Painters, AFL-CIO.

tion at the plant (R. 13; 136-139). Linsky directed Kraut to discharge all of the Company's employees (R. 13; 135). Kraut relayed Linsky's instructions to Foreman Stillwell at about 5 p.m. on July 16 (R. 13; 197). While at work that evening, Stillwell said to employee Soto, "There has been talk around the shop about a union. Did you hear anything about it?" Soto replied that he had heard "some talk about it," and then Stillwell stated, "Well, a few guys have been starting some trouble, I am going to fire them * * *" (R. 16, 32; 87).

The night-shift employees were discharged at the end of their shift of July 16-17 (R. 13; 63). On Friday morning, July 17, the day-shift employees were not permitted to enter the plant, and were paid off and terminated at about 8:30 a.m. (R. 13; 57, 147). One of the day-shift employees, Waggoner, who was told he was discharged and was given his check along with the other men, was requested by Foreman Stillwell to come back to work about 10:00 a.m. (R. 17-18, 32; 75). After he had returned and had worked for a few minutes, Waggoner, believing that the discharges were connected with the union organization and not wanting to mislead the Company, told Stillwell that he had signed a union card (R. 18; 75-77). Stillwell, after consulting with Kraut, then told Waggoner that he was laid off (*ibid.*).

On July 17, the day of the discharges, Gastelum, the Company's night-shift foreman, told Kraut that, when Moore had come to the plant the previous night to obtain signatures for the Union, he had spoken

only to "the colored men, and * * * the * * * Spanish boys weren't in the group" (R. 32; 65).[4] The following week, Gastelum asked Stillwell if the Company was "going to hire any of the Spanish boys that Art Moore hadn't spoken to." Stillwell replied that they would not be hired because it had been learned that "they were also in the union" (R. 15, 32; 67).

Shortly after the day-shift employees were discharged on July 17, Moore advised Union Representative Buckley what had occurred. Buckley immediately contacted Kraut, informed him the Union represented the Company's employees, and requested an appointment to discuss the "labor problem" (R. 18; 104). Kraut referred Buckley to the Company's labor relations consultant, Mrs. Edwin Selvin. Buckley called Mrs. Selvin, indicated that he represented the Company's employees, and requested a meeting with her regarding the situation at the Company's plant. She refused to meet with Buckley on the ground that the Company had no employees (R. 18; 105).

B. The Board's Conclusion and Order

From the foregoing facts, the Board concluded that the Company discharged its entire crew of production employees because of their union activities, in violation of Section 8(a)(3) and (1) of the Act (R. 31-33). In reaching this conclusion, the Board rejected the Company's contention that the wholesale discharge was due to a falloff in quantity or quality of

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[4] Some of the discharged crew members were of Spanish ancestry; others, of the Negro race (R. 15).

production (R. 32, 16-23). The Board further found that on July 17 the Union represented a majority of the Company's employees and that the Company was obligated to bargain with the Union upon request. Since the unlawful discharges did not relieve the Company of that obligation, the Board found that the Company's refusal to meet with the Union on July 17 and at all times thereafter constituted a violation of Section 8(a)(5) and (1) of the Act (R. 33, 22-23). Lastly, the Board concluded that Foreman Stillwell's threats to employee Soto that union agitators would be discharged constituted unlawful interference, restraint and coercion in violation of Section 8(a)(1) of the Act (R. 33, 23).

The Board's order required the Company to cease and desist from violating the above sections of the Act (R. 33-34). Affirmatively, the order required the Company to offer full reinstatement to the 23 employees discriminatorily discharged on July 17, to make them whole for lost wages, to bargain collectively with the Union upon request, and to post appropriate notices (R. 34-39).

C. The Decision of the Court of Appeals

The court of appeals, after a "careful examination of the record," upheld the Board's unfair labor practice findings as supported by substantial evidence on the whole record, and enforced the Board's order in full (Pet. App. A).

ARGUMENT

Petitioner does not challenge the Board's findings, upheld by the court below, that the Company refused to bargain with the Union, and that the Company unlawfully threatened its employees, in violation of Sections 8(a)(5) and 8(a)(1) of the Act. Petitioner's sole contention is that substantial evidence on the record considered as a whole does not support the Board's finding, upheld by the court below, that the Company discharged its employees because of their union activities, in violation of Section 8(a)(3) and (1) of the Act. Specifically, petitioner's only argument is that there is insufficient evidence to show that the Company had knowledge of its employees' union activity at the time of the discharge (Pet. 10-15). Clearly, the resolution of this narrow factual issue adversely to petitioner does not present a question warranting review by this Court, turning, as it does, only on the specific circumstances of this particular case. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491.

In any event, the evidence detailed in the Statement demonstrates that there is ample support in the record for the Board's findings that the Company knew of the organizational efforts of its employees, and that the Company discharged its employees because of these union activities. Contrary to petitioner's assumption (Pet. 12-15), the Board's finding of knowledge does not rest solely on the circumstances that Foreman Stillwell and Superintendent Ryder observed the meeting of July 14. The Board relied, in addition,

on the following facts (R. 32). The discharges occurred less than three days after that meeting, which had resulted in the employees' decision to obtain union representation. After making a report on the meeting to Plant Manager Kraut, Foreman Stillwell told employee Soto that there had been "talk around the shop about a union" and that the union agitators were going to be fired. Immediately thereafter, the employees were discharged. Further, Foreman Stillwell specifically attributed the discharges to union activities. Thus, when employee Waggoner, who was discharged and then permitted to return to work about an hour later, told Stillwell that he too had joined the Union, Stillwell consulted with Kraut and immediately discharged Waggoner again. And, Stillwell told his fellow-foreman, Gastelum, that none of the "Spanish boys" would be rehired because the Company had found out that "they were also in with the union" (R. 67). Moreover, the Board found that the record failed to support the Company's contention that the employees were discharged because of an alleged decrease in the quality or quantity of their production during the three days prior to the discharges.[5] In

[5] Briefly, the Company contended that the employees, who were discharged on July 16 and 17, were discharged because of a decrease in the quality and quantity of their production during the period of July 13, 14 and 15 (R. 32). The Board rejected these contentions. First of all, at least one of the discharged employees did not even work during this period (R. 32; 254-255). Further, the Company's own production figures showed that rather than a decline in production there was a substantial improvement in production rates for the week beginning July 13 as compared with

these circumstances, the Board was fully justified, as the court below found, in concluding that the Company knew of the union activities of its employees, and that it discharged them in order to thwart those organizational efforts and to avoid dealing with the Union.

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production rates for the weeks immediately preceding (R. 32, 18-20; 165, 191; Resp. Exh. 4a, 4b; 262). Some of the employees had worked for over a year and had never been criticized regarding their work (R. 32, 19; 59, 63, 71, 73, 218, 239). And, the Company offered no evidence to show that the work of all of the discharged employees was unsatisfactory (R. 32). As to the alleged decline in the quality of production, the credited evidence established that, while there may have been an increase in the amount of rejected material in July, this was due to the fact that the plywood stock used in July—from which the final product was made—was defective in that it was considerably more brittle than that ordinarily supplied (R. 32, 20; 47, 88-89).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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